

From: Tom Murphy
To: Microsoft ATR
Date: 1/27/02 5:57pm
Subject: Microsoft Settlement

Comments Concerning the Microsoft Proposed Settlement,
01/27/02

Dear Judge Colleen Kollar-Kotelly,

The anticompetitive and technically inaccurate settlement agreed to by the U.S. Justice Department is tainted and should be set aside as not in the public interest.

I have over ten years experience of dealing with Microsoft closely and 20 years of experience developing software across multiple platforms. I am an expert at understanding software design.

Microsoft has caused great harm to this country by limiting consumer choice and retarding innovation. A narrow settlement with middleware defined incorrectly will continue to harm consumers.

Windows XP continues the Microsoft tactic of limiting consumer choice. How this is done is quite subtle. Microsoft bundles applications with the operating system. The consumer by default uses the Microsoft applications. This is because the consumer would have to make extra tedious efforts to use applications from other vendors. In contrast, the Microsoft applications like Passport and Instant Messaging are rudely in your face. Microsoft uses its PC operating system monopoly to leverage into unrelated businesses.

The consumer has been further harmed by Microsoft amassing monopoly profits. In the final economic analysis, the consumer pays for product from other computer industry vendors. When those vendors have to pay Microsoft higher prices because of the monopoly, they are passed on to the consumer.

Any settlement should restore consumer choice and competition to the PC software industry. As presently drafted, the proposed settlement is not much better than no settlement at all. Let's review some of the loopholes in the settlement.

- * III: Microsoft can still pay off cooperating OEM's that do Microsoft's bidding.
- * III.C.3: Too restrictive.
- * III.F.2: Microsoft continues to control ISV's software development.
- * III.G.1: Microsoft can continue to pay vendors to promote its software platform.
- * III.H.1: Users should be allowed to remove any application. Users should be able to remove any API's from the operating system (that could pose security risks).
- * III.I.5: In order for a vendor to obtain Microsoft's technology, the vendor must surrender intellectual property rights.
- * IV.B.10: This is an unconstitutional free speech restriction.
- * IV.D.4.d: TC members should not be excluded from the legal process. This is an attempt to silence witnesses.
- * V. Any settlement should be permanent.
- * VI.A: API's should include interfaces used by device drivers and the interfaces used by real middleware to call operating system services. API's are not just application programming interfaces.
- * VI.D: All OEM's should be covered, not just the top 20.
- * VI.K: Internet Explorer, Windows Media Player, Windows Messenger, and Outlook Express are APPLICATIONS, not middleware!
- * VI.Q: A personal computer can be a server. Server software should not be excluded from illegal monopoly maintenance behavior. A PC can be both a client and server at the same time and this is integral to Microsoft's architecture.

I want to draw special attention to Section III.J.1.a. This section puts the security of this country at risk. At a minimum it need to be rewritten. Microsoft cannot be allowed to have a monopoly with respect to security software. Microsoft must be required to disclose security API's and documentation. This will enable competitors to provide add-on security solutions to Microsoft's historically insecure products.

The proposed settlement is complex and subject to interpretation and will generate years of unending legal wrangling. This legal cost will

further
burden the computer industry and ultimately harm the
consumer. In contrast, it would be very simple to
create a clear cut settlement that would be easy
for everyone to understand and not subject to
interpretation. Such a settlement would even protect
Microsoft stock holders.

Unfortunately, because I deal with Microsoft as a
software developer, I cannot reveal who I am, for fear
of souring my relations with Microsoft. The opinions
expressed are my own and do not represent the opinions
of present or past employers.

-- END --

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